

ARTICLE APPEARED
ON PAGE A-13

NEW YORK TIMES
11 July 1983

Filching of Carter Data: Crime or Ethics Lapse?

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Special to The New York Times

WASHINGTON, July 10 — Murky issues on the fringes of the law are raised by the investigation into whether any crimes were committed when President Reagan's aides accepted and used confidential materials from the Carter camp in the 1980 campaign.

News Analysis Justice Department investigators will have to measure facts that are to some extent in dispute against vaguely worded criminal statutes, with no close precedents to guide them. And this must be done in a politically charged atmosphere aggravated by the absence of any consensus on the limits of permissible campaign behavior.

A central legal question, never definitively resolved by the courts, is whether the filching of secret information from the Government violates a 19th-century statute making it a crime to steal Government property, including "records," or to receive such stolen property.

No crime has been clearly established by the evidence made public so far. Some legal experts say the Reagan aides' acceptance of documents and other information obtained through still-mysterious channels from the Carter camp raises only issues of ethics, not of criminal law.

But other experts say the knowing use of such materials might bring some Reagan aides within a broad reading of Federal or local theft statutes, even though prosecutions for such political conduct would be without precedent.

Applying 'Vague Criminal Laws'

"It seems unethical," Nathan Lewin, a prominent Washington lawyer, said of the affair, "but to try to take criminal statutes and apply them to something Congress has not specifically focused on is wrong." He said it would violate constitutional principles of fair notice to apply vague criminal laws after-the-fact to "things that aren't clearly designated as crimes."

"This is a tough one," said Philip B. Heymann, a Harvard law professor who headed the Justice Department's criminal division in the Carter Administration. "Assuming that significant Government documents were taken, I would find it very hard to make a decision about whether you should prosecute or not."

"Technically and literally it seems to fit within the terms of the statute," he said, referring to the law barring theft of Government property. "If someone took significant Government documents and sold them to a stockbroker who wanted to speculate on them, no one would doubt that was a prosecutable crime."

But Mr. Heymann said he was not "comfortable" with the notion of criminalizing conduct so closely related to the traditional "roughhouse in campaigns."

Mr. Lewin, Mr. Heymann and other experts agreed that any evidence that Reagan aides obtained classified national security secrets from the Carter White House, that they paid for Carter secrets with bribes or promises of Government jobs, or that they mounted a systematic effort to steal Carter documents as opposed to merely accepting those offered by disgruntled Carter workers, would make a much stronger case for prosecution.

There is no general "official secrets act" in the United States specifically barring disclosure of Government secrets. But Mr. Reagan, who has campaigned vigorously against "leaks" of Government secrets to the news media, has repeatedly said it is "against the law" to release classified Government secrets to any unauthorized people, or to publish such information.

Under Mr. Reagan and some of his predecessors, the Justice Department has taken the position that people who make unauthorized disclosures of certain Government secrets, and those who accept and make use of such information, may violate the law barring theft of Government property, and may also violate the espionage laws if classified national security secrets are involved.

"The Administration has been arguing that it's a crime to release Government information, and if that's true then what was done here appears also to be a crime," Morton H. Halperin, director of the Center for National Security Studies, a private organization financed, in part, by the American Civil Liberties Union, said in an interview.

But he cautioned that in his view the Administration's interpretation of the law was dangerously overbroad.

A Common Occurrence in Capital

Government and political information, including confidential material, is part of the currency of political commerce in Washington, eagerly sought and obtained by reporters, lobbyists, lawyers, diplomats and others as well as politicians. Few have imagined that this could subject them to prosecution.

Civil libertarians and news media representatives have vigorously assailed the notion that the publication of Government secrets, or the "leaking" of such secrets to reporters by Government employees, could be a crime, and there has never been a successful prosecution for such activity.

The varied nature of the information obtained by the Reagan campaign from the Carter White House and campaign in 1980, and the diverse and still largely unexplained ways in which it found its way to Reagan aides, complicate the legal picture.

Range of Subjects

While some of the materials made public so far contain information available to the general public, some deal with confidential Carter strategy for the October 1980 Reagan-Carter debate, some with confidential Government business and some with a mix of politics and Government business.

Richard V. Allen, President Reagan's former national security adviser, who was a high-level Reagan aide in the campaign, has said that in 1980 he received "unsolicited, unclassified, innocuous" materials from an unidentified source on the National Security Council staff of the Carter White House.

Others, including Zbigniew Brzezinski, President Carter's national security adviser, have questioned whether sensitive, classified National Security Council documents might have been obtained by Reagan campaign aides, who were very concerned that Mr. Carter might be preparing a dramatic "October surprise" involving a solution to the Iran hostage crisis to swing the election.

The law that appears most closely relevant to these facts, Section 641 of the Federal Criminal Code, states that "whoever embezzles, steals, purloins" any "record, voucher, money or thing of value of the United States" can be

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